



UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01904

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His cancer be found In the Line of Duty (ILOD).
2. His Medical Continuation (MEDCON) Orders be extended from Dec 20 through Dec 21.

APPLICANT'S CONTENTIONS

He was diagnosed with cancer in Jul 20. At that time, he was on extended Military Personnel Appropriation (MPA) orders and had been on active duty orders almost continuously since Apr 19. His physician told him that his cancer was less than six months old at the time of diagnosis. The active-duty component agreed his diagnosis was ILOD. Yet, due to multiple errors his orders were not properly routed and considered during the Reserve review process.

He contends he was erroneously found Not in the Line of Duty (NILOD), contrary to AF 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON) and Incapacitation Pay (INCAP) Pay*, paragraph 1.10.2.2.1, *Standard of Proof*, which states "the standard of evidentiary proof used to make existed prior to service-not service aggravated determinations is clear and unmistakable evidence...undebatable information that the condition existed prior to military service" (Attach 23). Which means there must be "no doubt" to rule his cancer NILOD. He believes the conflicting findings on AF Form 348, *Line of Duty Determination*, reflecting the ARC LOD Boards recommendation as ILOD and the Approving Authorities final determination of NILOD shows there was doubt, in contrast to the stated guidance (Attach 20).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve Lieutenant Colonel (O-5).

On 2 Apr 19, according to *Work-Product*, dated 4 Apr 19, provided by applicant, he was placed on MPA orders in accordance with 10 USC 12301 (D), for the period of 29 Apr 19 – 2 Aug 19.

According to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant served a period of active duty from 5 Aug 19 – 14 Feb 20.

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On 27 Mar 20, according to [redacted] *Work-Product* dated 3 Apr 20, provided by applicant, he was placed on MPA orders in accordance with 10 USC 12301 (D), for the period of 8 Jul 20 – 25 Sep 20.

On 19 Nov 21, according to AF Form 348, *Line of Duty Determination*, provided by the applicant, his illness was found ILOD by his immediate commander. On 7 Dec 21, the Appointing Authority found the determination ILOD.

On 20 Dec 21, according to AF Form 348, provided by the applicant, the Medical Reviewer non-concurred with the appointing authority and recommended a finding of NILOD-Not Due to Own Misconduct. On 21 Dec 21, the Approving Authority found the applicant's illness was NILOD-Not Due to Member's Misconduct.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C and D.

AIR FORCE EVALUATION

AFRC/A1KK recommends granting the applicant's request to be found In the Line of Duty indicating there is an error or injustice. The applicant had been on continuous military orders since 12 Apr 19. The applicant had a NILOD finding for a Testicular Cancer diagnosis in Jul 20 and his subsequent appeal was denied. The applicant's civilian provider noted at the time of diagnosis, his cancer had likely been present for less than six months due to the generally accepted practice that germ cell tumors grow quickly.

A Testicular Cancer subject matter expert was also consulted and according to their calculations, the tumor start date would have been around 2 Jul 19, during the applicant's continuous orders.

These clinical documents provided by the applicant, provide additional information that would have changed the AFRC/SGP Board Medical recommendation to find the applicant's condition to be ILOD.

The complete advisory opinion is at Exhibit C.

ARC CMD recommends granting the applicant's request for MEDCON orders from 9 Dec 20 through the end of his recovery, indicating an error or injustice occurred. The applicant's NILOD was overturned by AFRC/SGP on 12 Aug 24. Had his request been approved in Dec 20, he would have been on MEDCON orders and remained on those orders during the Integrated Disability Evaluation System (IDES) process until 23 Jan 22, when he was found fit for duty.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Jan 2025 comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFRC/A1K and ARC CMD and finds a preponderance of the evidence substantiates the applicant's contentions. The Board notes, the additional clinical information provided by the applicant indicates his medical condition would have occurred while in the line of duty and had this information been presented to the AFRC/SGP Medical Board they would have made an ILOD determination. Furthermore, with an ILOD determination, the applicant would have been placed in the IDCS and would have been entitled to remain on MEDCON orders up until the date he was found fit for duty. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

a. His medical condition for testicular cancer that was found Not In Line of Duty (NILOD)-Not Due to Own Misconduct be overturned and found In Line of Duty (ILOD).

b. For the period 9 December 2020 through 23 January 2022, he was placed on active duty, for the purposes of medical continuation in accordance with Title 10, U.S.C. §12301(h).

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-01904 in Executive Session on 11 Mar 25:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 24 May 24.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory opinion, AFRC/A1KK, dated 18 Jul 24.

Exhibit D: Advisory opinion, ARC CMD, AFPC/DPFA, dated 14 Jan 25.

Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 27 Jan 25.

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Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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